

REFERENCE TITLE: sex offenders; residency restrictions; schools

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1480

Introduced by
Senator Martin

AN ACT

AMENDING SECTIONS 13-922 AND 41-1604.07, ARIZONA REVISED STATUTES; RELATING TO SUPERVISED RELEASE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-922, Arizona Revised Statutes, is amended to
3 read:

4 13-922. Persons convicted of sexual offenses; residency
5 restrictions; exceptions; definitions

6 A. AS A CONDITION OF PROBATION, THE COURT SHALL ORDER THAT A PERSON
7 WHO IS CONVICTED OF A SEXUAL OFFENSE NOT RESIDE WITHIN FOUR HUNDRED FORTY
8 YARDS, MEASURED IN A STRAIGHT LINE IN ANY DIRECTION, OF A CHILD CARE
9 FACILITY, A PRIVATE, PUBLIC OR CHARTER SCHOOL, A PUBLIC PLAYGROUND OR A
10 PUBLIC SWIMMING POOL.

11 A. B. An adult probation officer shall not approve the residence of a
12 probationer who has been convicted of a felony offense that requires the
13 probationer to register pursuant to section 13-3821 in any multifamily
14 dwelling unless the number of probationers who are required to register and
15 who reside in the multifamily dwelling is less than ten per cent of the
16 number of dwelling units that are contained in the multifamily dwelling. Not
17 more than one probationer who is classified as a level three offender
18 pursuant to sections 13-3825 and 13-3826 shall reside in a multifamily
19 dwelling.

20 B. C. ~~Subsection A of~~ This section does not apply to any of the
21 following:

22 1. A person who was convicted of a sexual offense and who was placed
23 on probation before ~~the effective date of this section~~ AUGUST 12, 2005 until
24 that person changes residence.

25 2. A person who resides in a residential treatment facility or a
26 person who participates in a supervised program that provides transitional
27 services, including diagnostic evaluation, behavioral, medical, psychiatric,
28 psychological and social service care.

29 3. A juvenile who resides with a parent or guardian.

30 4. A multifamily dwelling in an industrial or commercial zone.

31 C. D. This section does not limit the court's discretion to prohibit
32 or restrict, as a condition of probation, a person who is convicted of a
33 sexual offense from residing in any multifamily dwelling.

34 D. E. A public entity or an employee of a public entity is not liable
35 for any failure to prevent a violation of this section unless the public
36 employee, acting within the scope of the public employee's employment,
37 intended to disregard the provisions of this section or to cause injury or
38 was grossly negligent.

39 E. F. This section applies only in counties with a population of more
40 than two million five hundred thousand persons.

41 F. G. For the purposes of this section:

42 1. "Multifamily dwelling" means a building or buildings that are
43 located in an area zoned residential, that are attached to each other, that
44 contain two or more dwelling units, including triplexes, fourplexes and

1 apartments, and that have as their primary access a common hallway or
2 corridor.

3 2. "Multifamily dwelling unit" means one or more rooms within a
4 building that are arranged, designed or used for residential purposes and
5 that contain independent sanitary and cooking facilities.

6 3. "Residential treatment facility" means a residential facility that
7 provides any service or care, including diagnostic evaluation, behavioral,
8 medical, psychiatric, psychological and social service care, vocational
9 rehabilitation or career counseling, to residents and that is licensed by
10 this state or a political subdivision of this state.

11 Sec. 2. Section 41-1604.07, Arizona Revised Statutes, is amended to
12 read:

13 **41-1604.07. Earned release credits; forfeiture; restoration**

14 A. Pursuant to rules adopted by the director, each prisoner in the
15 eligible earned release credit class shall be allowed an earned release
16 credit of one day for every six days served, including time served in county
17 jails, except for those prisoners who are sentenced to serve the full term of
18 imprisonment imposed by the court.

19 B. Release credits earned by a prisoner pursuant to subsection A of
20 this section shall not reduce the term of imprisonment imposed by the court
21 on the prisoner.

22 C. On reclassification of a prisoner resulting from the prisoner's
23 failure to adhere to the rules of the department or failure to demonstrate a
24 continual willingness to volunteer for or successfully participate in a work,
25 educational, treatment or training program, the director may declare all
26 release credits earned by the prisoner forfeited. In the discretion of the
27 director forfeited release credits may subsequently be restored. The
28 director shall maintain an account of release credits earned by each
29 prisoner.

30 D. A prisoner who has reached the prisoner's earned release date or
31 sentence expiration date shall be released to begin the prisoner's term of
32 community supervision imposed by the court or term of probation if the court
33 waived community supervision pursuant to section 13-603, except that the
34 director may deny or delay the prisoner's release to community supervision or
35 probation if the director believes the prisoner may be a sexually violent
36 person as defined in section 36-3701 until the screening process is complete
37 and the director determines that the prisoner will not be referred to the
38 county attorney pursuant to section 36-3702. If the term of community
39 supervision is waived, the state department of corrections shall provide
40 reasonable notice to the probation department of the scheduled release of the
41 prisoner from confinement by the department. If the court waives community
42 supervision, the director shall issue the prisoner an absolute discharge on
43 the prisoner's earned release credit date. A prisoner who is released on the
44 earned release credit date to serve a term of probation is not under the
45 control of the state department of corrections when community supervision has

1 been waived and the state department of corrections is not required to
2 provide parole services.

3 E. Notwithstanding subsection D of this section, a prisoner who fails
4 to achieve functional literacy at an eighth grade literacy level shall not be
5 released to begin the prisoner's term of community supervision until either
6 the prisoner achieves an eighth grade functional literacy level as measured
7 by standardized assessment testing or the prisoner serves the full term of
8 imprisonment imposed by the court, whichever first occurs. This subsection
9 does not apply to inmates who are any of the following:

10 1. Unable to meet the functional literacy standard required by section
11 31-229.02, subsection A, due to a medical, developmental or learning
12 disability as described in section 31-229, subsection C.

13 2. Classified as level five offenders.

14 3. Foreign nationals.

15 4. Inmates who have less than six months incarceration to serve on
16 commitment to the department.

17 F. The department shall establish conditions of community supervision
18 it deems appropriate in order to ensure that the best interests of the
19 prisoner and the citizens of this state are served. These conditions may
20 include participation in a rehabilitation program or counseling and
21 performance of community restitution work, except that if the prisoner was
22 convicted of a violation of sexual conduct with a minor under fifteen years
23 of age or molestation of a child under fifteen years of age, the department
24 shall impose as a condition of community supervision a prohibition on
25 residing within four hundred forty ~~feet~~ YARDS of a school or its accompanying
26 grounds. If a prisoner who reaches the prisoner's earned release credit date
27 refuses to sign and agree to abide by the conditions of supervision before
28 release on community supervision, the prisoner shall not be released. When
29 the prisoner reaches the sentence expiration date, the prisoner shall be
30 released to begin the term of community supervision. If the prisoner refuses
31 to sign and agree to abide by the conditions of release, the prisoner shall
32 not be released on the sentence expiration date and shall serve the term of
33 community supervision in prison. The department is required to supervise any
34 offender on community supervision until the period of community supervision
35 expires. The department may bring an offender in violation of the offender's
36 terms and conditions before the board of executive clemency. For the
37 purposes of this subsection, "school" means any public, charter or private
38 school where children attend classes.

39 G. The director pursuant to rules adopted by the department shall
40 authorize the release of any prisoner on the prisoner's earned release credit
41 date to serve any consecutive term imposed on the prisoner. The release
42 shall be for the sentence completed only. The prisoner shall remain under
43 the custody and control of the department. The director may authorize the
44 rescission of the release to any consecutive term if the prisoner fails to
45 adhere to the rules of the department.

1 H. If a prisoner absconds from community supervision, any time spent
2 before the prisoner is returned to custody is excluded in calculating the
3 remaining period of community supervision.

4 I. A prisoner shall forfeit five days of the prisoner's earned release
5 credits:

6 1. If the court finds or a disciplinary hearing held after a review by
7 and recommendations from the attorney general's office determines that the
8 prisoner does any of the following:

- 9 (a) Brings a claim without substantial justification.
- 10 (b) Unreasonably expands or delays a proceeding.
- 11 (c) Testifies falsely or otherwise presents false information or
12 material to the court.

13 (d) Submits a claim that is intended solely to harass the party it is
14 filed against.

15 2. For each time the prisoner tests positive for any prohibited drugs
16 during the period of time the prisoner is incarcerated.

17 J. If the prisoner does not have five days of earned release credits,
18 the prisoner shall forfeit the prisoner's existing earned release credits and
19 shall be ineligible from accruing earned release credits until the number of
20 earned release credits the prisoner would have otherwise accrued equals the
21 difference between five days and the number of existing earned release credit
22 days the prisoner forfeits pursuant to this section.

23 K. The director may authorize temporary release on inmate status of
24 eligible inmates pursuant to rules adopted by the director within ninety days
25 of any other authorized release date. The release authorization applies to
26 any inmate who has been convicted of a drug offense, who has been determined
27 to be eligible for participation in the transition program pursuant to
28 section 31-281 and who has agreed to participate in the transition program.